Supreme Court, U.S.
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No. 96-1875

(2)

In The

Supreme Court of the United States

October Term, 1996

OTTIE HOOKER,

Petitioner,

vs.

JOHN DEERE CREDIT and
PRODUCERS TRACTOR COMPANY,

Respondents.

On Petition For A Writ Of Certiorari to the Arkansas Supreme Court

BRIEF OF PRODUCERS TRACTOR COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPPOSITION TO JURISDICTION

No jurisdiction to issue the requested Writ exists.

Petitioner premises his petition on the existence of circumstances to which Rule 10 (a) and (c) would apply. Section (a) is limited to decisions of a court of appeals. The decision to be reviewed imminating from the Arkansas Supreme Court, this section is not applicable.

That the Seventh Amendment to the United States Constitution does not apply to state courts was determined and settled early. *Pearson v. Yewdall*, 95 U.S. 294, 24 L.Ed. 436 (1877). That the Fourteenth Amendment operates to extend it to states has also been repeatly rejected. *Walker v. Sauvinet*, 92 U.S. 90, 23 L.Ed. 969 (1875); *Frank v. Mangum*, 237 U.S. 309, 35 S.Ct. 582 (1914); *Hawkins v. Bleakly*, 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678 (1917). These decisions have been accepted as binding authority by everyone except petitioner. Section (c) cannot therefore be invoked.

POINT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Seventh Amendment to the United States Constitution applies only to proceedings in the courts of the United States and does not in any manner govern or regulate trials by jury in state courts.

Petitioner initiated his civil action in the Chancery Court of St. Francis County, Arkansas, to obtain an ex

parte temporary restraining order. The Chancellor, having assumed subject matter jurisdiction to grant the restraining order, may constitutionally proceed under the clean-up doctrine to determine all other issues of facts. The Constitution of Arkansas, as interpreted by the Arkansas Supreme Court, is not violated.

STATEMENT OF THE CASE

In 1988 and 1990, petitioner purchased at retail three pieces of farming equipment from Producers Equipment Company. Respondent John Deere Credit (John Deere hereafter), provided purchase money financing. Under the financing contracts, petitioner was obligated to repay the debts in annual installments beginning in 1989 and extending through 1995.

In September, 1993, petitioner defaulted. John Deere repossessed the equipment. John Deere then assigned the financing contracts to respondent Producers Tractor Company, Inc. (Producers hereafter), the successor to original seller. Producers published notices of its intent to make a public sale of the equipment on February 22, 1994.

On February 23, 1994, petitioner filed his complaint (Respondent's Appendix pg. App. 1 ("Appx. pg." hereafter)) in the Chancery Court of St. Francis County, Arkansas. He sought to restrain Producers' public sale and to recover compensatory damages from both Producers and John Deere. The restraining order was issued without prior notice. Later, the Chancellor ordered petitioner and Producers to engage in debt mediation.

On August 24, 1994, petitioner and Producers reached an agreement. Within fourteen days thereafter, petitioner obligated himself to borrow approximately $100,407 from a third party and to pay that amount to Producers to obtain possession of the equipment.

Being unable to obtain the required refinancing, petitioner filed a petition for bankruptcy relief with the United States Bankruptcy Court for the Eastern District of Arkansas on November 9, 1994. He invoked relief under Chapter 12 of the Bankruptcy Code. The automatic stay, effected by 11 U.S.C. § 362, usurped the jurisdiction of the Chancery Court.

In the bankruptcy case, petitioner filed an adversary proceeding under 11 U.S.C § 542 to obtain possession of the equipment. To settle that proceeding, an agreed order was entered. Through the order, petitioner obtained possession of the equipment in 1995 and paid a substantial portion of the 1995 adequate protection amount. Possession in 1996 and subsequent years was conditioned upon future adequate protection amounts being paid.

Petitioner was unable to develop an acceptable plan. His bankruptcy case was dismissed with prejudice on February 4, 1996. The automatic stay was vacated with the dismissal.

Petitioner having breached the agreement that the parties reached through the judicially mandated mediation process, Producers then moved the Chancery Court for an order vacating the restraining order and directing petitioner to return the equipment. Reacting, petitioner filed several motions. One motion sought trial by jury, another sought to disqualify Producers' attorney because

both he and the Chancellor were lawyers and members of the Bar of Arkansas and another asked that laymen, designated in his Durable Powers of Attorney, be recognized as his counsel.

The Chancellor issued findings of fact and conclusions of law through her letter-opinion dated April 17, 1996 (Pet. Appx. pg. 5-9). The Chancellor's Order (Pet. Appx. pg. 3) was entered May 2, 1996. In compliance with the Order, the equipment was impounded and is currently stored with the designated third party while the parties move toward a final hearing.

Petitioner's appeal to the Arkansas Supreme Court was dismissed on December 18, 1996.

ARGUMENT

The Seventh Amendment to the United States Constitution does not extend to state courts. The states are left to establish their own procedures.

Petitioner invoked equity jurisdiction to obtain a temporary restraining order. The clean-up doctrine has survived constitution review in Arkansas.

That the Seventh Amendment to the United States Constitution applies only to courts of the United States and not to state courts was established early. *Pearson v. Yewdall*, 95 U.S. 294, 24 L.Ed. 436 (1877). It does not limit the powers of the several states. *Edwards v. Elliott*, 21 Wall. 532, 22 L.Ed. 487 (1874). A party to a civil action in state court has no right to trial by jury under either the Seventh Amendment or the Fourteen Amendment of the United States Constitution. *Iacaponi v. New Amsterdam*

Cas. Co., 258 F.Supp. 880 (W.D.Pa. 1966), aff'd 379 F.2d 311 (3d Cir. 1967), cert. denied 389 U.S. 1054, 88 S.Ct. 802, 19 L.Ed. 849 (1968). Trial by jury is not a privilege or immunity of national citizenship which the states are forbidden by the Fourteenth Amendment to abridge. *Walker v. Sauvinet*, 92 S.Ct. 90, 23 L.Ed. 969 (1875).

A state may establish its own procedures and practices regarding the conduct of civil litigation including the right of trial by jury. *Hardware Dealer Mut. Fire Ins. Co. v. Glidden Co.*, 284 U.S. 151, 52 S.Ct. 59, 76 L.Ed. 214 (1931). Article 2, Section 7 of the Arkansas Constitution assures a litigant of a jury trial only in those cases that are so triable at common law. *Jones v. Reed*, 267 Ark. 235, 590 S.W. 6 (1979).

Arkansas' law court is the circuit court. It alone has the assistance of juries. The chancery is a court of equitable jurisdiction, and the chancellor determines issues of fact without a jury. Injunctions and temporary restraining orders are equitable remedies over which the chancery court has jurisdiction. *Manitowoc Remanufacturing, Inc. v. Vocque*, 307 Ark. 271, 819 S.W.2d 275 (1991). Although circuit courts are not wholly without jurisdiction to grant injunctions, petitioner elected to obtain his temporary restraining order in the chancery court. Having obtained jurisdiction for one purpose, the clean-up doctrine allows the chancellor to adjudicate all other issues of fact and law. The clean-up doctrine does not violate the Arkansas Constitution. *Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986), cert. den. 481 U.S. 1069, 107 S.Ct. 2462, 95 L.Ed.2d 145 (1987). Neither does it offend the Seventh Amendment to the United States Constitution because it is not extended by the Fourteenth

Amendment to the states. *Colclasure v. Kansas City Life Ins. Co., supra,* citing *Hawkins v. Bleakly,* 243 U.S. 210, 37 S.Ct. 255, 61 L.Ed. 678 (1917) at 720 S.W.2d at 918.

The cases cited by petitioner in support of his petition do not do so.

In *Pennsylvania Coal Co. v. Mahon,* cited by petitioner at page 4 of his brief, this court held that state statute that prevented the removal of coal in the proximity of personal residences was an improper taking and exceeded the bounds of the constitutional exercise of the policy power. The court was not then concerned with Seventh Amendment rights; indeed, neither the amendment, a reference to it, nor the word jury or the term jury trial can be found in the opinion.

In *Marbury v. Madison,* individuals seeking to compel action by the secretary of state brought an original action in this court. Its subject was not a matter triable by a jury in a state court. Neither was the Seventh Amendment involved.

Miranda v. Arizona examined the admissibility of incommunicado statements obtained from criminal defendants by state officers in light of the Fifth Amendment to the United States Constitution. Again, it involved neither the Seventh Amendment nor a right to trial by jury in a civil case.

Boyd v. U.S. was the appeal of a criminal conviction in the United States district court based on a jury verdict. Constitutional concerns were the Fourth and Fifth Amendments, not the Seventh.

In *State of Georgia v. Brailsford,* the conflict was between a judgment creditor and Georgia which asserted a claim to the judgment debtor's property under a legislative act that permitted confiscation of property owned by a British citizen. The opinion never mentions either the Seventh Amendment or trial by jury.

PERCEIVED MISSTATEMENT OF FACT

In Rule 15 counsel are reminded of their obligation to point out in the brief in opposition any perceived misstatements of fact contained in the petition that bear on the presented issues. At page 3 of his brief, petitioner asserts, "As this case progressed the trial court issued an Order that . . . **thereafter dismissing my civil complaint** . . . (emphasis added). That is an untrue statement.

As late as June 12, 1997, petitioner was continuing to resist respondent's discovery efforts.

This misstatement is included without deciding whether it bears on the issues presented.

CONCLUSION

That the Seventh Amendment applies only to United States courts is well established. That it applies to state courts under the Fourteenth Amendment has been rejected. A writ of certiorari is not justified.

The petition should be denied.

Respectfully submitted,

JAMES R. VAN DOVER
Attorney for Producers
Tractor Company

APPENDIX

IN THE CHANCERY COURT OF
ST. FRANCIS COUNTY, ARKANSAS

OTTIE HOOKER — PETITIONER

VS — CASE NO. E-94-104

JOHN DEERE CREDIT and
PRODUCERS TRACTOR CO. — RESPONDENT

Filed February 23, 1994
Time: 8:40 A.M.
Bette S. Green, Clerk
St. Francis County

COMPLAINT IN EQUITY AND MOTION FOR AN EMERGENCY HEARING FOR A TEMPORARY RESTRAINING ORDER

Petitioner, Ottie Hooker, for his petition, states:

1. Petitioner (Hooker) is a resident of St. Francis County, Arkansas.

2. Respondent (John Deere Credit) is a Corporation registered by the Secretary of State to do business in the State of Arkansas.

3. Respondent (Producers Tractor Company) is a Corporation registered by the Secretary of State to do business in the State of Arkansas.

4. On or about September 20, 1993 the Respondents repossessed the property of Hooker.

5. The property included a Rice Combine, ID. Number #H09600X635612, a Flexible Platform ID> Number #H00930F635644, and MFWD Tractor ID

Number #RW4850P012239. Each of these items having a value of over $25,000.00 a piece. Total value of equipment is approximately $140,000.00.

6. All of this equipment is used by Hooker and his son in their farming operation.

7. The Respondents, in violation of Arkansas law, did not present the matter of Hookers debt before the Arkansas Board of Mediation prior to their taking of the equipment. Arkansas Act 829 of 1989.

8. Respondents are now attempting to sell Hookers equipment outside the scrutiny of the Courts and in violation of both Hookers rights to mediation and his right to Notice of Sale.

9. Hooker hereby moves for a temporary restraining order preventing Respondents from selling the above equipment. If the Court does not permit an emergency hearing and issue such order the equipment will be sold and Hooker will be irretrievably harmed.

10. Hooker further moves for a final hearing requiring Respondents to return his equipment and start the required mediation process required by Arkansas law. Hooker should be awarded any damages resulting from his loss of use of the equipment and any damage, including loss of value of the equipment, caused by negligence and/or neglect of Hooker's equipment caused directly or indirectly by respondants [sic].

11. Respondant's [sic] should be held jointly and severally liable for any damages or failure to comply with the court's orders in this matter.

WHEREFORE, premises considered, petitioner prays the Court to grant an immediate hearing for a temporary restraining order and set a final hearing granting the above requested relief.

Respectfully submitted,

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